

STATE OF WISCONSIN      CIRCUIT COURT      MANITOWOC COUNTY

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STATE OF WISCONSIN,

Plaintiff,

DISCOVERY DEMAND

vs.

MANITOWOC COUNTY  
STATE OF WISCONSIN  
**FILED**

STEVEN AVERY,

Case No. 05 CF 381

FEB 2 2006

Defendant.

**CLERK OF CIRCUIT COURT**

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Pursuant to sections 971.23, and 972.11(1), Wisconsin Statutes, the Fifth, Sixth and Fourteenth Amendments to the United States Constitution and the supporting case law, the defendant demands that the District Attorney:

1. Pursuant to sec. 971.23(1)(a) Wis. Stats., furnish the defendant with a copy of all written and/or recorded statements made by the defendant, including the testimony of the defendant in a secret proceeding under sec. 968.26 or before a grand jury, concerning the alleged crime which are in the possession, custody or control of the plaintiff;
2. Pursuant to sec. 971.23(1)(b) Wis. Stats., furnish the defendant with a summary of all oral statements made by the defendant plus a list of names, current addresses, and current telephone numbers of all witnesses to such statements;
3. Furnish the defendant with a written report detailing the defendant's conduct which the plaintiff intends to introduce as implied admission(s) and the names, current addresses and current telephone numbers of all witnesses to such conduct;
4. Pursuant to sec. 971.23(1)(bm) Stats., furnish the defendant with a copy of any evidence obtained in the manner described under sec. 968.31(2)(b) Stats. which the plaintiff intends to use at trial;
5. Pursuant to sec. 971.23(1)(c) Wis. Stats., furnish the defendant with a copy of his criminal record;
6. Pursuant to sec. 971.23(1)(d) Wis. Stats., furnish the defendant with a list of all witnesses and their addresses whom the plaintiff intends to call at trial;

7. Pursuant to sec. 971.23(1)(e) Wis. Stats., furnish the defendant with any written or recorded statements of a witness named on the list furnished pursuant to the previous paragraph, including any videotaped oral statement of a child under sec. 908.08, any reports or statements of experts made in connection with the case or, if an expert does not prepare a report or statement, a written summary of the expert's findings or the subject matter of his or her testimony, and the results of any physical or mental examination, scientific test, experiment or comparison that the plaintiff intends to offer in evidence at trial.
8. Pursuant to sec. 971.23(1)(f) Wis. Stats., furnish the defendant with a copy of the criminal records including the arrest records and the record of all prior convictions including all convictions from other jurisdictions - state and federal, as reflected in both the CIB and FBI records of those persons that the State intends to call as witnesses;
9. Pursuant to sec. 906.09(1), furnish the defendant with a copy of the juvenile records including the arrest records and the record of all prior juvenile adjudications including out-of-state juvenile records of those persons that the plaintiff intends to call as witnesses;
10. Pursuant to sec. 971.23(1)(g) Wis. Stats., allow the defendant to inspect and copy or photograph any physical evidence that the district attorney intends to offer in evidence at trial.
11. Furnish the defendant with the names, current addresses and current telephone numbers of all informants in the case as well as all relevant information which has been provided to the plaintiff by informants;
12. Pursuant to State v. Fink, 195 Wis. 2d 330 (Ct. App. 1995), notify the defendant as soon as possible of any evidence of other acts under sec. 904.04(2) Wis. Stats. which the state may seek to introduce at trial as proof of motive, opportunity, intent, preparation, plan, knowledge, identity, or absence of mistake or accident; as well as the names, current addresses and current telephone numbers of all witnesses of such conduct by the defendant.
13. Pursuant to secs. 971.29(9) and 971.23(1)(e) Wis. Stats., notify the defendant in writing as soon as possible but at least 45 days before the date set for trial of plaintiff's intent to use evidence of any deoxyribonucleic acid (DNA) profile and to furnish the defendant as soon as possible with the following information concerning any DNA profile, to wit:

- a. any reports or statements of experts or if an expert does not prepare a report or statement, a written summary of the expert's findings or the subject matter of his or her testimony
  - b. the results of any physical examination, scientific test, experiment or comparison that the plaintiff intends to offer in evidence at trial.
14. Furnish the defendant with a detailed inventory of all items which the State has in its possession, knowledge or control in regards to this case which were obtained from or belong to the defendant, together with the date, time, place and manner in which those items were obtained.
15. Furnish the defendant with all information concerning any electronic surveillance of any conversation to which the defendant was a party and of any electronic surveillance of his premises;
16. Furnish the defendant with all information concerning the interception of mail which is or was sent to him or which he sends to others including but not limited to the use of a mail cover;
17. Furnish the defendant with a written report detailing the defendant's conduct, including all observations of him as well as the results of all tests and/or experiments which were performed on or by the defendant which the State intends to introduce into evidence;
18. Furnish the defendant with a copy of all subpoenas for documents issued pursuant to sec. 968.135, Stats., copies of all requisite showings of probable cause, and copies of all documents so received;
19. Disclose to the defendant all promises, rewards and inducements made by the plaintiff or any of its agents to any witnesses that will testify at the trial in the above-captioned matter;
20. Pursuant to sec. 971.23(1)(h) Wis. Stats., furnish the defendant with all exculpatory evidence, including but not limited to:
  - a. Any and all exculpatory evidence and/or information within the possession, knowledge or control of the State which would tend to negate the guilt of the defendant.
  - b. Any and all exculpatory evidence and/or information within the possession, knowledge or control of the State which would tend to affect the weight or credibility of the evidence used against the defendant including but not limited to:

- i. Any and all statements of all individuals which may be inconsistent in whole or in part with any other statement made by the same individual.
  - ii. Any statements made by any individuals which are inconsistent in whole or in part with any and all statements made by other individuals who have given statements relevant to the charges against the defendant.
  - iii. Any and all reports, results, and conclusions of all tests recreations, reconstructions, calculations or experiments made to be used by the plaintiff which were inconsistent with the plaintiff's theory of the defendant's guilt, and/or any other theory inculcating the defendant of any crime charged or uncharged, or which were inconclusive or abortive of the same.
  - iv. Any and all information, reports, or evidence of any form of bias, prejudice, or untruthfulness of any witness the State intends to call at trial. O.A.G. 12-86, April 28, 1986.
- c. Any and all evidence and/or other information in the possession or knowledge of the State which would tend to show, indicate or give rise to inferences that the defendant:
- i. was acting in self defense at the time, either of the alleged offense(s) were committed,
  - ii. was acting in the defense of others at the time of the alleged offense,
  - iii. was acting under the influence of adequate provocation at the time of the alleged offense,
  - iv. was acting because the defendant believed he or another was in imminent danger or great bodily harm and that the force was necessary to defend the endangered person, whether or not that belief was unreasonable at the time of the alleged offense,
  - v. was acting because the defendant believed that force was necessary in the exercise of a privilege to prevent or terminate the commission of a felony, whether or not that belief was unreasonable at the time of the alleged offense,
  - vi. was acting in the exercise of a privilege under 939.45, Wisconsin Statutes at the time of the alleged offense.

- vii. was acting because the defendant believed, as a result of a threat or threats by a person it was the only means of preventing imminent death or great bodily harm to himself or another person, whether or not that belief was unreasonable at the time of the alleged offense.
  - viii. was acting because the defendant believed as a result of the pressure of natural physical forces, it was the only means of preventing imminent public disaster, or imminent death or great bodily harm to himself or another, whether or not that belief was unreasonable at the time of the alleged offense.
- d. Any and all evidence and/or other information in the possession, knowledge or control of the State which would indicate or gives rise to inferences that the defendant:
- i. caused the death of Teresa Halbach intentionally under mitigating circumstances, including but not limited to those enumerated in section 940.01(2) Wisconsin Statutes, at the time of the alleged offense,
  - ii. recklessly caused the death of Teresa Halbach under circumstances showing utter disregard for human life at the time of the alleged offense,
  - iii. recklessly caused the death of Teresa Halbach under circumstances that do not show utter disregard for human life at the time of the alleged offense,
  - iv. negligently caused the death of Teresa Halbach at the time of the alleged offense,
  - v. caused the death of Teresa Halbach by the negligent handling or operation of a dangerous weapon, explosives or fire at the time of the alleged offense,
  - vi. caused the death of Teresa Halbach by the intoxicated use of a vehicle or firearm,
  - vii. caused the death of Teresa Halbach by the negligent operation of a vehicle,
  - viii. caused the death of Teresa Halbach by the negligent control of a vicious animal,

- ix. caused the death of Teresa Halbach while committing or attempting to commit a crime specified in sec. 940.225(1) or (2)(a), 943.02, 943.10(2), 943.23(1g), or 943.32(2) Wis. Stats.
- x. caused the death of Teresa Halbach under circumstances, or with a mental purpose or lack thereof, which constitute any other lesser included offense to the alleged offense.
- e. Any and all evidence and/or information in the possession, knowledge or control of the State which would indicate, show, or gives rise to inferences that the defendant:
  - i. was suffering from a mental disease or defect at the time any of the alleged offense, and/or,
  - ii. lacked substantial capacity to appreciate the wrongfulness of his conduct at that time, and/or,
  - iii. lacked substantial capacity to conform his conduct to requirements of law at that time.
- f. Any and all evidence and/or other information in the possession, knowledge or control of the State which would tend to show or gives rise to inferences that:
  - i. the defendant was in a voluntary intoxicated or drugged condition at the time of the alleged offense,
  - ii. this condition may have negated the existence of a state of mind essential to the offense charged.
- g. Any and all evidence and/or other information in the possession, knowledge or control of the State which would tend to show or gives rise to inferences that:
  - i. the defendant was in an involuntary intoxicated or drugged condition at the time of the alleged offense,
  - ii. this condition may have rendered the defendant incapable of distinguishing between right and wrong in regard to the alleged criminal act at the time the act was committed.

- h. Any and all evidence and/or other information in the possession, knowledge of control of the State which would tend to show or give rise to inferences that the defendant was stimulated by intoxication at the time of offense to a degree that he should be convicted of a lesser degree of homicide. Please see State v. Heisler, 116 Wis.2d 657, 344 NW.2d 190 (Ct. App. 1983) and Lee v. State, 65 Wis.2d, 648, 223 N.W.2d 455 (1974).
- i. All exculpatory evidence and/or information within the possession, knowledge or control of the State which indicates or gives rise to inferences which indicate that the events alleged as crimes committed by the defendant were the result of accident or were perpetrated by accidental means.
- j. All exculpatory evidence and/or information within the possession, knowledge or control of the State which indicates or gives rise to inferences which indicate that the crime or crimes charged as well as the events alleged to have been committed by the defendant, were committed in whole or in part by a person or persons other than the defendant. Please see Kyles v. Whitley, 514 U.S. 419, 115 S. Ct. 1555, 131 L. Ed. 2d 490 (1995).
- k. All exculpatory evidence and/or information within the possession, knowledge or control of the State which indicates or gives rise to inferences which indicate that any or all of the evidence being used against the defendant was "planted" by others in an attempt to falsely inculcate the defendant. Id.
- l. All exculpatory evidence and/or information within the possession, knowledge or control of the State which indicates or gives rise to inferences that the events alleged or crimes committed by the defendant were the result of an honest error of either fact or law that negated the existence of a state of mind essential to the crime.
- m. All exculpatory evidence and/or information within the possession, knowledge or control of the State which indicates or gives rise to inferences that the events alleged or crimes committed by the defendant were the result of misadventure.
- n. All exculpatory evidence and/or information within the possession, knowledge or control of the State which indicates or gives rise to inferences that the defendant acted with a depraved mind at the time of any of the crimes charged.

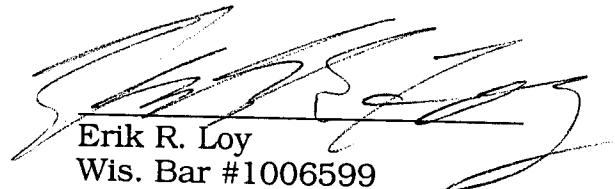
- o. All exculpatory evidence and/or information within the possession, knowledge or control of the State which indicates or gives rise to inferences that the defendant was acting with a high degree of negligence at the time of any alleged offense.
- p. All exculpatory evidence and/or information within the possession, knowledge or control of the State which indicates or gives rise to inferences which tend to indicate that the defendant "did not mean to" commit any of the crimes alleged in the information, as that defense is described in State v. Bougneit, 97 Wis.2d 687, 695, 294 N.W.2d 675, (Ct. App. 1980), and Morrisette v. United States, 342 U.S. 246, 250-251, 72 S.Ct. 243 (1952).
- q. All exculpatory evidence and/or information within the possession, knowledge or control of the State that the defendant acted without the requisite intent, or with lack of intent, at the time of any crime alleged in the information.
- r. Any and all evidence and/or other information in the possession, knowledge or control of the State which would tend to indicate or gives rise to inferences that the defendant acted while suffering from mental, psychological, physiological, biological, medical or emotional disorders; as well as any information indicating that the defendant has suffered from physical, sexual, mental or emotional abuse.
- s. Any and all evidence and/or other information in the possession, knowledge or control of the State concerning the activities of Teresa Halbach and all allegations against her made by the defendant, other citizens, or law enforcement officers, and copies of all law enforcement reports, memos, books, and all other reports and documents of any and all investigations done by the Manitowoc County Sheriff's Department, the City of Manitowoc Police Department, the City of Two Rivers Police Department, the Wisconsin Department of Justice, and/or any other law enforcement agency; or agency or individual acting under color of state law concerning the activities of Teresa Halbach and the allegations made against her.
- t. Any and all evidence and or other information in the possession, knowledge or control of the State, which would extenuate, mitigate, or reduce the degree of the offenses charged or the defendant's punishment therefore, including, but not limited to evidence or information which shows or gives rise to inferences that the defendant acted at the time of the alleged offense:



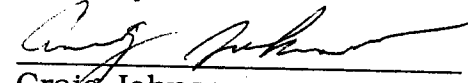
- i. with a diminished capacity
  - ii. in a drugged condition
  - iii. in an intoxicated state
  - iv. with a depraved mind
  - v. with reckless conduct (gross negligence)
  - vi. with a high degree of negligence
  - vii. in self defense
  - viii. with excessive use of self defense
  - ix. under duress
  - x. under coercion
  - xi. under necessity
  - xii. while mistaken as to fact or law
  - xiii. while suffering from abused child syndrome
  - xiv. by misadventure
  - xv. under provocation
  - xvi. while he "did not mean to," State v. Bougneit, supra
  - xvii. with the lack of intent
  - xviii. with the lack of reckless conduct showing utter disregard for human life.
- u. Any and all exculpatory information and/or evidence within the possession, knowledge or control of the State which would extenuate, mitigate or reduce the degree of either of the offenses charged and/or of the defendant's punishment.
  - v. Any and all information in the possession, knowledge or control of the State which shocks the conscience and is favorable to the defendant.
  - w. Any and all exculpatory evidence and/or information within the possession, knowledge or control of the State which would form the basis for further investigation by the defense.
21. Furnish the names and addresses of all persons known by the state to have witnessed any matter related to this case, whether or not the state intends to call them as witnesses at any hearing or trial in this case. Please see Brady v. Maryland, 373 U.S. 83 (1963) and Nelson v. State, 59 Wis.2d 474, 208 N. W.2d 410 (1973).
  22. Furnish copies of all written, recorded, or videotaped statements and a summary of any oral statements made by witnesses, including but not limited to copies of police reports, showups, notebooks, memo books, and all other documents, prepared by the witnesses, whether or not the state intends to call them to testify at any hearing or trial in this case. Please see State v. Groh, 69 Wis.2d 481, 230 N.W.2d 745 (1975); State v. Van Ark, 62 Wis.2d 155, 215 N.W.2d 41 (1974); and Simos v. State, 53 Wis.2d 493, 192 N.W.2d 877 (1972).

23. Pursuant to sec. 971.23(7) Wis. Stats., continue to immediately disclose any additional evidence discovered by the State or its agents, whether prior to or during trial, with is required to be furnished to the defendant pursuant to this demand or sec. 971.23 Wis. Stats.
24. Pursuant to Wold v. State, 57 Wis.2d 344 (1973), exercise due diligence in the discovery of evidence which is required to be furnished to the defendant pursuant to either this demand or sec. 971.23 Wis. Stats.

Dated at Manitowoc, Wisconsin, this 1st day of February, 2006.



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